



Matthew G. Kleiner

PARTNER

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RELATED SERVICES

- Insurance
- Bad Faith
- Tribal & Native American
- Life, Health, Disability & ERISA
- Professional Liability Coverage
- Appellate
- Healthcare
- Insurance – Appellate
- Directors & Officers Coverage
- Property Insurance

OFFICES

- San Diego
- Tucson
- Phoenix

OVERVIEW

Matthew G. Kleiner is a responsive, thoughtful, and skilled attorney whose practice focuses on appellate work and defending healthcare and insurance litigation. He is one of a handful of attorneys in California certified as an appellate specialist. He is also licensed and practices in both California and Arizona. Matt prides himself on developing creative strategies to short-cut potentially expensive litigation via early settlement, motion practice, or other resolution.

Appellate

Matt is certified as an Appellate Specialist by the California Board of Legal Specialization. He has nearly

20 years of experience handling appellate matters before the Ninth Circuit Court of Appeals, California Courts of Appeal, and Arizona Courts of Appeals. Matt has handled hundreds of appeals, argued in Federal, California, and Arizona appellate courts, and has favorable decisions published in all three jurisdictions.

Healthcare

Matt has extensive experience defending health and disability arbitration and litigation brought under both the Employment Retirement Income Security Act of 1974 (“ERISA”) and state law. These cases involve a variety of issues including claims brought against health insurers by both their members and healthcare providers. The member litigation relates to claims for benefits, bad faith, and breach of fiduciary duty. The provider litigation involves claims brought by contracted and non-contracted healthcare providers for breach of contract, extra-contractual claims, and failure to pay.

Insurance

Matt also has provided insurance coverage advice and defending bad faith litigation since graduating Santa Clara law school in 2000. His practice covers important and complex issues confronting insurance companies in areas such as:

- Environmental liabilities
- First party property
- Asbestos and other toxic tort coverage
- Primary and excess exhaustion and priority issues
- Directors and officers claims
- General liability claims
- Professional liability claims
- Bad faith allegations
- Life

REPRESENTATIVE EXPERIENCE

Matt has successfully handled writs and appeals in many different areas of the law and jurisdictions. He also obtained remarkable results for his clients in the areas of healthcare and insurance. Here are some examples of Matt’s results:

Appellate

- ***Krein v. Du-All Safety, LLC v. Superior Court* (2019) 34 Cal.App.5th 485** – Successfully petitioned for writ of mandate to correct the trial court’s erroneous exclusion of rebuttal experts timely designated pursuant to California Code of Civil Procedure

- **Ryan v. Real Estate of the Pacific, Inc. (2019) 32 Cal.App.5th 637** – Reversed trial court’s improper grant of summary judgment to sellers’ real estate brokers on the grounds that expert witness testimony is not required where it is alleged that the brokers failed to disclose known material information that had an adverse impact on value of the sellers’ home.
- **Morales v. 22nd Dist. Agricultural Assn. (2018) 25 Cal.App.5th 85** – Affirmed trial court’s rejection of plaintiff’s argument that employees of a state agricultural association stated a claim for overtime compensation pursuant to a theory that the association was a joint employer with outside vendors.
- **Dremak v. Urban Outfitters, Inc., 2018 Cal. App. Unpub. LEXIS 1925** – Obtained a complete affirmation of the largest defense verdict in the history of the firm involving a class action defense verdict on behalf of a multinational clothing corporation in a case facing more than \$1 billion of exposure and a \$288 million demand. The case involved alleged violations of the Song-Beverly Credit Card Act (Credit Card Act) which prohibits merchants from requesting and recording “personal identification information” as a condition of completing a credit card transaction.
- **Wiliby v. Aetna Life Insurance Company, 867 F.3d 1129 (9th Cir. 2017)** – The Ninth Circuit Court of Appeals agreed that the Employee Retirement Income Security Act of 1974 (“ERISA”) preempts application of the California Insurance Code’s ban on discretionary clauses to self-funded disability plans.
- Obtained affirmation of a judgment of full dismissal in a nationwide class action claiming misleading labeling against a tea manufacturer.
- Obtained affirmation of a judgment of dismissal based on sovereign immunity obtained from the Industrial Commission of Arizona of a worker’s compensation claim against a tribal entity.
- Achieved a significant victory when the California court of appeal affirmed summary judgment granted in a difficult wrongful death product liability case involving a paintball gun accident.
- **Service Employees International Union, Local 99 v. Options—A Child Care & Human Services Agency (2012) 200 Cal.App.4th 869** – Holding that an agreement to comply with a statute “cannot alter legislative intent or expand the scope of the statute.”].
- **Mathews v. Life Care Centers of America, Inc. et al (2008) 217 Ariz. 606** – Persuaded the Arizona Court of Appeals that the trial court incorrectly concluded that the Adult Protective Services Act precludes an elderly person and a healthcare facility from voluntarily agreeing to arbitration.

Litigation

- Obtained multiple judgments in favor of health insurer clients in ERISA cases brought by medical providers seeking payment for medically unnecessary treatment.
- Removed case by repeat medical plaintiff from Arizona small claims court to the United States District Court and then obtained judgment affirming client’s decision to deny provider medical payments.
- Assisted in obtaining dismissal of 27 claims involving cult-type allegations without payment of any settlement money.

- Assisted in obtaining favorable settlement of bad faith travel insurance case involving the alleged failure to properly evacuate insured following traumatic brain injury.
- Successfully negotiated a one-third of a million dollar settlement on client's behalf. The client sought recovery of monies owed under an exclusive supply agreement. The client recouped all monies owed under the contract and incurred minimal attorney fees due to pro-active settlement strategies. Moreover, the client's long-standing relationship with the defendant was preserved, but on terms much more favorable to the client.

Insurance

- Obtained summary judgment of bad faith insurance case involving water damage and alleged mold injuries resulting from a "micro-burst" storm in Arizona.
- Obtained a complete judgment of dismissal of a complaint seeking more than \$870,000 in attorney fees, as well as punitive damages, for the alleged wrongful refusal to defend the insured.
- Won a major victory by convincing a Federal District Court judge he incorrectly denied an insurance client's motion for partial summary adjudication as to plaintiffs' cause of action for breach of the implied covenant of good faith and fair dealing and claim for punitive damages.
- Extracted a multi-national insurance company client from potentially lengthy, difficult and costly litigation early in the case by a motion to dismiss.

PUBLICATIONS

- Protecting an Insurer's Right to Rescind and Avoiding Waiver, *Life, Health Disability News*, DRI (December 2018)
- Reasonable Contractual Timing Limitations are Enforceable in ERISA Plans, DRI (September 2014)

CREDENTIALS

Admissions

- Arizona
- California
- U.S. District Courts, Arizona
- U.S. District Courts, California
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Federal Circuit
- U.S. Supreme Court

Education

- J.D., *cum laude*, Santa Clara University School of Law, 2000
- Technical Editor, *Santa Clara Law Review*

- International Human Rights, Oxford University, 1998
- B.A., *magna cum laude*, Political Science, University of Arizona

Honors

- *Best Lawyers in America*® distinction in Insurance Law (2020-2025)
- Certified by The State of California Board of Legal Specialization as an Appellate Specialist
- *Super Lawyers*® distinction in the fields of Appellate, Employee Benefits/ERISA, and Insurance Coverage (2013-2015)